IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12070 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

Versus

DISTRICT MAGISTRATE

Appearance:

HL PATEL ADVOCATES for Petitioner

MS PUNANI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 26/04/2001

ORAL JUDGEMENT

1. District Magistrate, Dahod passed an order on the 16th September, 2000, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Rajubhai Pratapbhai Baria, under the

provisions of the said Act.

2. The detaining authority took into consideration three offences of theft registered against the petitioner, so also the statements of four anonymous witnesses. The detaining authority considered the activities of the detenu and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr. Patel, learned advocate appearing for the petitioner, has restricted his arguments to the ground the offences registered against the detenu do not indicate any disturbance to public order and, therefore, the subjective satisfaction recorded by the detaining authority regarding the activities of the detenu being detrimental to public order is without any basis. Mr. Patel also contended that the statements of anonymous witnesses were not verified by the detaining authority himself and, therefore, the subjective satisfaction recorded for the need for exercise of powers under Section (2) is without any basis. He, therefore, submitted that the petition may kindly be allowed.

4. Ms. Punani, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have not been verified by the detaining authority himself, but were got verified through the Dy.S.P. and, on that basis, a subjective satisfaction is recorded for the need for exercise of powers under Section 9(2) of the PASA Act. On the basis of a verification by the Dy.S.P., the detaining authority could not have recorded a subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act. The subjective satisfaction recorded by the detaining authority in this regard is, therefore, vitiated.

6. Adverting to the offences registered against the detenu, a perusal of the First Information Report and the other relevant documents supplied to the detenu makes it abundantly clear that each of the case is of an individual character and there was no disturbance to

public order. All that was involved was a law and order situation. Resultantly, the satisfaction arrived at by the detaining authority about the activities of the detenu being detrimental to public order is without any basis. Neither the statements nor the registered offences an be accepted to form the basis of this satisfaction.

7. In view of the above discussion, the reliance placed on by the detaining authority on the statements of anonymous witnesses and the registered offences cannot be upheld. The order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

8. In the result, the petition is allowed. The impugned order of detention dated the 16th September, 2000, passed against the detenu is hereby quashed. The detenu-Rajubhai Pratapbhai Baria is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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